IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 3207 OF 2006.

M/s.Manek Brothers. ... Appellant.

Versus.

The Municipal Mazdoor Union and anr. ... Respondents.

Shri Chaurasia i/by Shri A.M.Saraogi for the Appellant.

Shri Reis with Shri V.M.Parkar i/by Shri M.D.Nagle for the Respondent No.1.

Shri J.J.Xavier for the Respondent No.2.

CORAM : ABHAY S.OKA, J.

DATED : 24th January, 2007.

P.C.:

1. Admit. The learned Advocates appearing for Respondent no.1 and Respondent no.2 waive service. Considering the nature of the impugned order, the Appeal is forthwith taken up for hearing.

2. The Appellant is the Plaintiff. The suit filed by the Appellant has been dismissed by order dated 17th April 2006. The submission of the Advocate for the Appellant is that the suit has been dismissed without placing the same for final hearing. He submits that the issues were not framed and the parties were not given any opportunity to lead evidence. He submitted that the Court was considering the Notice of Motion taken out for interim relief and while considering the prayer for interim relief, the suit has been dismissed by passing

the impugned order. He therefore, submitted that the impugned order deserves to be set aside by passing the order of remand. Shri Reis, the learned Counsel appearing for the 1st Respondent pointed out that while dismissing the suit, liberty has been granted to adopt appropriate proceedings. He submitted that in view of the statement which is recorded in the impugned order, in fact nothing survives in the suit. He submitted that he has no objection if the order of remand is passed. He, however, submitted that no interim relief be granted as during the pendency of the suit in the trial Court, there was no ad-interim relief operating in favour of the Appellant. The learned Counsel for the 2nd Respondent also opposed the prayer made by the Advocate for the Appellant.

3. A perusal of the impugned order shows that the suit has been dismissed when the trial Court was considering the Notice of Motion taken out for grant of interim relief. The suit has been dismissed only on the basis of the statement made by the Advocate appearing for the 1st Respondent before the trial Court.

4. This is not a case where preliminary issue as regards maintainability of the suit was framed. The suit was not ready for final hearing. In my view the order of dismissal of the suit only on the basis of a

statement made by the Advocate appearing for the 1st Respondent is contrary to the provisions of the Code of Civil Procedure, 1908. Therefore, the impugned judgment and order deserves to be quashed and set aside and the suit deserves to be remanded to the trial Court for considering the same afresh.

5. The learned Advocate for the Appellant submitted that the ad-interim order passed by this Court may be continued as an interim order till disposal of the suit. The said prayer is opposed by the learned Counsel appearing for the Respondents.

6. It is not in dispute that during the pendency of the suit, there was no ad-interim relief granted in favour of the present Appellant and in fact the Notice of Motion taken out for interim relief was for consideration of the trial Court when the impugned order was passed. A perusal of the ad-interim order dated 5th May 2006 passed by this Court shows that the said order was passed as Advocate appearing for the 2nd Respondent sought time to take instructions. The said ad-interim order has been continued. The said ad-interim order has not been passed after hearing the parties in detail for admission of the Appeal. Therefore, the said order cannot continue as an interim order and the Appellant will have to apply for appropriate interim relief before

the trial Court. Only to enable the Appellant to apply for interim relief before the trial Court, the said ad-interim order granted by this Court can be continued for a reasonable time.

7. Hence the following order is passed:

i) The impugned Judgment and Order dated 17th April 2006 is set aside and L.C.Suit No.1010 of 2005 is restored to file.

ii) The parties are directed to appear before the trial Court on 12th February 2007. It will be open for the Appellant to apply for appropriate interim relief. It is made clear that the notice of the said date fixed before the trial Court will not be issued to the parties.

iii) The trial Court will decide the suit afresh in accordance with the law.

iv) Ad-interim order dated 5th May 2006 passed on Civil Application No.2480 of 2006 will continue to operate till 26th February 2007.

v) All contentions of the parties on merits are kept open.

vi) The Appeal is partly allowed in the above terms with no order as to costs.

vii) Parties to act on an authenticated copy of the order.

Judge.